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7 United States of America

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr1446-WQH
)	
11 Plaintiff,	)	DATE: June 16, 2008
	)	TIME: 2:00 p.m.
12 v.)	
	)	GOVERNMENT'S RESPONSE AND
13 RAMON ESPERANZA CARRILLO,	)	OPPOSITION TO DEFENDANTS'
	)	MOTIONS TO:
14 Defendant.)	
	)	(1) COMPEL DISCOVERY;
15	)	(2) SUPPRESS STATEMENTS;
16	)	(3) DISMISS INDICTMENT DUE TO
	)	ERROR IN GRAND JURY
17	)	INSTRUCTIONS
	)	(4) LEAVE TO FILE FURTHER MOTIONS
18)	
	)	TOGETHER WITH STATEMENT OF FACTS
19	)	AND MEMORANDUM OF POINT'S AND
	)	AUTHORITIES AND GOVERNMENT'S
20	)	MOTIONS FOR FINGERPRINT EXEMPLARS
	)	AND RECIPROCAL DISCOVERY
21)	
22)	

23 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through
24 its counsel, Karen P. Hewitt, United States Attorney, and Steve
25 Miller, Assistant United States Attorney, and hereby files its
26 response and opposition to defendants' above-referenced motions. Said
27 response is based upon the files and records of this case, together
28 with the attached statement of facts, memorandum of points and
authorities.

I

STATEMENT OF FACTS

On March 1, 2007, defendant RAMON ESPERANZA CARRILLO was convicted of 8 U.S.C. § 1326 in the District of California New Mexico and was sentenced to 15 months in prison. Defendant had been deported twice. His latest deportation was after serving his sentence when he was removed through El Paso Del Norte, Texas on April 1, 2008.

Nine days later, on April 10, 2008, Border Patrol agents located defendant after following footprints in the brush four miles north of the border and 25 miles east of the Tecate Port of Entry. The agents discovered defendant while he hid among a set of boulders with five other aliens. In the field, defendant admitted that he was a Mexican citizen with no legal right to be in the United States.

II

POINTS AND AUTHORITIES

A. THE GOVERNMENT HAS AND WILL CONTINUE TO COMPLY WITH RULE 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The Government has provided numerous pages of voluntary discovery. Government will continue to provide voluntary discovery when it becomes available and will comply with Rule 16 and its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and 18 U.S.C. § 3500.

The Government gives specific notice of its intent to offer evidence of other acts under Rule 404(b). By this notice, the Government reserves the right to offer any evidence, of any act, that was performed by the defendant, that is referenced in any of the discovery. These acts include, but are not limited to any of defendant's prior crossings, prior deportations, prior statements

1 regarding citizenship and any prior felony. The Government also
2 intends to use evidence related to his prior arrest and conviction for
3 8 U.S.C. § 1326 as relevant evidence of defendant's alienage and the
4 fact that he had been deported. The acts also include, but are not
5 limited to events that only become relevant once defendant's theory
6 of the case is revealed.

7 B. THE GOVERNMENT DOES NOT INTEND TO OFFER DEFENDANT'S
8 STATEMENTS FROM THE DAY OF HIS ARREST

9 Defendant moved this court to suppress the statements he made to
10 the Border Patrol Agents. Defendant invoked his right to an attorney.
11 However, the Government will offer defendant's sworn statements he
12 made to the immigration judge and the New Mexico District Court when
13 he admitted the elements of the same offense for which he is currently
14 charged. Nor is there any need to hold an evidentiary hearing to
15 determine the voluntariness of his sworn statements, in the presence
16 of his counsel, at a time a Federal District Court Judge necessarily
17 found his plea to be knowing and voluntary.

18 C. DEFENDANT'S MOTION TO DISMISS BECAUSE OF ALLEGED
19 ERROR IN THE GRAND JURY INSTRUCTIONS SHOULD BE DENIED

20 Defendant argues that the indictment should be dismissed because
21 of various instructions that were or were not given to the grand jury.
22 United States v. Marcucci, 299 F.3d 1156 (9th Cir. 2002), and United
23 States v. Navarro-Vargas, 408 F.3d 1184 (9th Cir. 2005), is
24 dispositive on this issue and defendant's motion should be summarily
25 denied.

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1 D. ANY LEAVE FOR DEFENDANT TO FILE FURTHER
2 MOTIONS SHOULD BE STRICTLY LIMITED

3 While the government recognizes this court's discretion to permit
4 defendant to file further motions, the Government does oppose
5 defendant's motion to the extent it is conjectural, overly broad and
6 invites abuse. Any need for further motions should be justified at
7 the time they are filed, permitting both the Government to oppose on
8 a motion-by-motion basis and this court to determine if such motions
9 could in fact have been filed earlier. Any other course would invite
10 an interminable and protracted motion practice, resulting in delay of
11 trial.

12 E. THE GOVERNMENT'S MOTION FOR RECIPROCAL
13 DISCOVERY SHOULD BE GRANTED

14 1. Rule 16(b)

15 The defendant has invoked Federal Rule of Criminal
16 Procedure 16(a) in his motion for discovery. In addition, the
17 Government voluntarily will comply with the requirements of Federal
18 Rule of Criminal Procedure 16(a). Thus, the 16(b) provision of that
19 rule are operable as to defendant.

20 The Government, pursuant to Rule 16(b), hereby requests the
21 defendant to permit the Government to inspect, copy, and photograph
22 any and all books, papers, documents, photographs, tangible objects,
23 or make copies of portions thereof, which are within the possession,
24 custody or control of defendant and which he intends to introduce as
25 evidence in his case in chief at trial.

26 The Government further requests that it be permitted to inspect
27 and copy or photograph any results or reports of physical or mental
28 examinations and of scientific tests or experiments made in connection

1 with this case, which are in the possession or control of the
2 defendant, which he intends to introduce as evidence in chief at the
3 trial or which were prepared by a witness whom the defendant intends
4 to call as a witness. The Government also requests that the Court
5 make such orders as it deems necessary under Rule 16(d)(1) and (2) to
6 ensure that the Government receives the discovery to which it is
7 entitled.

8 2. Rule 26.2

9 Federal Rule of Criminal Procedure 26.2 requires the production
10 of prior statements of all witnesses except the defendant. The Rule
11 thus provides for the reciprocal production of Jencks statements. As
12 stated in pertinent part:

13 After a witness other than the defendant has testified on
14 direct examination, the court, on motion of a party who did
15 not call the witness, shall order the attorney . . . to
16 produce, for the examination and use of the moving party,
any statement of the witness that is in their possession .
. . . .

17 Fed. R. Crim. P. 26.2(a).

18 The time frame established by the Rule requires the statement to
19 be provided after the witness has testified, as in the Jencks Act.
20 Therefore, the Government hereby requests that defendant be ordered
21 to supply all prior statements of defense witnesses by a reasonable
22 date before trial to be set by the court. This order should include
23 any form these statements are memorialized in including, but not
24 limited to, tape recordings, handwritten or typed notes and reports.

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1 F. THE GOVERNMENT'S MOTION FOR FINGER
2 PRINTS SHOULD BE GRANTED

3 The Government moves this court to permit the Government's
4 fingerprint expert to take defendant's fingerprints in anticipation
5 of trial testimony linking defendant to the warrant of deportation.

6
7 III

8 CONCLUSION

9 For the foregoing reasons, the Government respectfully requests
10 that defendant's motions be denied and the Government motions be
11 granted.

12 DATED: June 9, 2008.

13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 S/Steve Miller

17 STEVE MILLER
18 Assistant U.S. Attorney
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1 UNITED STATES OF AMERICA

2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,) Criminal Case No. 08cr1446
4 Plaintiff,)
5 v.) CERTIFICATE OF SERVICE
6 RAMON ESPERANZA CARRILLO,)
7 Defendant.)
8 _____)

9 IT IS HEREBY CERTIFIED THAT:

10 I, Steve Miller, am a Citizen of the United States over the age
11 of eighteen years and a resident of San Diego county, California. My
12 business address is 880 Front Street, San Diego, California 92101-
13 8893. I am not a party to the above-entitled action. I have caused
14 service of the Government's Response and Opposition to Defendant's
15 Motions on the following parties by electronically filing the
16 foregoing with the Clerk of the District Court using its ECF system,
17 which electronically notifies them.

18 1. Robert Hensler, Federal Defenders of San Diego, Inc.

19 I hereby certify that I have caused to be mailed the foregoing,
20 by the United States Postal Service, to the following non-EFC
21 participants on this case n/a the last known address, at which place
22 there is delivery service of mail from the United States Postal
23 Service.

24 I declare under penalty of perjury that the foregoing is true and
25 correct.

26 Executed on June 9, 2008.

27 s/Steve Miller
28 STEVE MILLER